

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. TITLE OF CASE (NAME OF FIRST PARTY ON EACH SIDE ONLY) Bithner v Optics Inc

2. CATEGORY IN WHICH THE CASE BELONGS BASED UPON THE NUMBERED NATURE OF SUIT CODE LISTED ON THE CIVIL COVER SHEET. (SEE LOCAL RULE 40.1(A)(1)).

☒ I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT NO 22 P 2 34

☒ II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950. *Also complete AO 120 or AO 121 for patent, trademark or copyright cases

☐ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.

☐ IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.

☐ V. 150, 152, 153.

3. TITLE AND NUMBER, IF ANY, OF RELATED CASES. (SEE LOCAL RULE 40.1(G)). IF MORE THAN ONE PRIOR RELATED CASE HAS BEEN FILED IN THIS DISTRICT PLEASE INDICATE THE TITLE AND NUMBER OF THE FIRST FILED CASE IN THIS COURT.

4. HAS A PRIOR ACTION BETWEEN THE SAME PARTIES AND BASED ON THE SAME CLAIM EVER BEEN FILED IN THIS COURT?

YES ☐ NO ☒

5. DOES THE COMPLAINT IN THIS CASE QUESTION THE CONSTITUTIONALITY OF AN ACT OF CONGRESS AFFECTING THE PUBLIC INTEREST? (SEE 28 USC §2403)

YES ☐ NO ☒

IF SO, IS THE U.S.A. OR AN OFFICER, AGENT OR EMPLOYEE OF THE U.S. A PARTY?

YES ☐ NO ☐

6. IS THIS CASE REQUIRED TO BE HEARD AND DETERMINED BY A DISTRICT COURT OF THREE JUDGES PURSUANT TO TITLE 28 USC §2284?

YES ☐ NO ☒

7. DO ALL OF THE PARTIES IN THIS ACTION, EXCLUDING GOVERNMENTAL AGENCIES OF THE UNITED STATES AND THE COMMONWEALTH OF MASSACHUSETTS ("GOVERNMENTAL AGENCIES"), RESIDING IN MASSACHUSETTS RESIDE IN THE SAME DIVISION? - (SEE LOCAL RULE 40.1(D)).

YES ☒ NO ☐

A. IF YES, IN WHICH DIVISION DO ALL OF THE NON-GOVERNMENTAL PARTIES RESIDE?

EASTERN DIVISION ☒ CENTRAL DIVISION ☐ WESTERN DIVISION ☐

B. IF NO, IN WHICH DIVISION DO THE MAJORITY OF THE PLAINTIFFS OR THE ONLY PARTIES, EXCLUDING GOVERNMENTAL AGENCIES, RESIDING IN MASSACHUSETTS RESIDE?

EASTERN DIVISION ☐ CENTRAL DIVISION ☐ WESTERN DIVISION ☐

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Howard Wilgoren

ADDRESS 179 Union Ave Framingham MA 01702

TELEPHONE NO. 508-626-8600

JS 44
(Rev. 12/96)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Edwin James Bittner

DEFENDANTS

Optos, Inc

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF
(EXCEPT IN U.S. PLAINTIFF CASES)

State of Washington

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(IN U.S. PLAINTIFF CASES ONLY)

Middlesex

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Howard Wilgoven
179 Union Ave
Framingham MA 01702

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION

(PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant

- ☒ 3 Federal Question
(U.S. Government Not a Party)
- ☒ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|-------------------------------------|---|----------------------------|-------------------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input checked="" type="checkbox"/> | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> |
| Citizen of Another State | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

V. NATURE OF SUIT

(PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input checked="" type="checkbox"/> 750 Other Labor Litigation <input type="checkbox"/> 761 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7809	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 990 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence HABEAS CORPUS: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

VI. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

Violation of the Family and Medical Leave Act by failing to allow leave pursuant to statute and retaliatory termination of emp.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION
☐ UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ YES ☐ NOVIII. RELATED CASE(S) (See instructions):
IF ANY

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

EDWIN JAMES BITTNER

Plaintiff

v.

OPTOS INC.,

Defendant

MAGISTRATE JUDGE Dein

CIVIL ACTION NO.

COMPLAINT AND DEMAND FOR JURY TRIAL

I. INTRODUCTION

This action is brought by **EDWIN JAMES BITTNER** against **OPTOS INC**, his former employer. Edwin Bittner alleges that Optos, Inc violated the provisions of the Family and Medical Leave Act of 1993, 29 U.S.C. §§ 2601 et seq by refusing his requests for a leave as authorized by the statute and by terminating his employment in retaliation for the exercise of his right to request a leave as authorized by the statute. Plaintiff also seeks repayment of a payment made for the purchase of stocks in Optos, Inc., which were never provided by Optos, Inc., to Mr. Bittner.

II. JURISDICTION

1. The claims asserted herein arise under and pursuant to the Family and Medical Leave Act of 1993, 29 U.S.C. §§ 2601 et seq This Court has jurisdiction of this action pursuant to 29 U.S.C. 1132(f), 29 U.S.C. § 1132(e) (1),

RECEIPT # _____
AMOUNT \$ 150
SUMMONS ISSUED yes
LOCAL RULE 4.1 _____
WAIVER FORM _____
MCF ISSUED _____
BY DPTY. CLK. fw
DATE 11/22/04

and 28 U.S.C. § 1331 and § 1367. The Court also has pendant jurisdiction over the related state law claims.

2. Venue is proper in this district under 29 U.S.C. § 1132(e) (2), in that the breaches of duty and violations alleged herein occurred in this district. The Court also has jurisdiction over the lawsuit under 28 U.S.C. §1332 because the plaintiff and the defendants are citizens of different states, and the amount in controversy exceeds Seventy Five Thousand (\$75,000.00) Dollars.

III. PARTIES

3. Plaintiff EDWIN BITTNER, (Hereinafter, "Bittner") is a resident of Freeland, Washington. Plaintiff was an employee of Defendant, Optos, Inc, from May 21, 2002 until his employment was unlawfully terminated on October 31, 2003.

3. Defendant, OPTOS, INC., (Hereinafter, "Optos") is a Delaware corporation and has a place of business in Marlborough, Middlesex County, Massachusetts.

IV. STATEMENT OF FACTS

4. Mr. Bittner was employed by Optos as a Field Service Engineer for the Northwest, from May 21, 2002 until he was unlawfully terminated on October 31, 2003. During the course of his employment Mr. Bittner at all times performed the duties of his position in an outstanding manner.

5. On or about August 29, 2003 Mr. Bittner and his wife completed the process to be licensed as Foster Parents.

6. On or about September 23, 2003 Mr. Bittner and his wife received a foster child placement. Mr. Bittner requested a one week Family and Medical Leave of absence from his supervisor, Dennis Nilan, for the purpose of caring for a foster child. Mr. Nilan denied the request stating, "Not if you want to keep your job."

7. On or about October 23, 2003 Mr. Bittner and his wife received a placement of a foster child who they intend to adopt. The child was born positive for cocaine and had other serious medical issues at birth. Mr. Bittner again requested a Family and Medical Leave of absence from his supervisor, Dennis Nilan. Mr. Nilan denied that request.

8. On October 31, 2003 Mr. Bittner contacted a representative of defendant's Human Resources Department. He was advised that he could not be denied a leave of absence given the circumstances. After concluding the conversation with Mr. Bittner, the Human Resources representative called Mr. Nilan.

9. Five minutes after speaking with the Human Resources representative Mr. Nilan called Mr. Bittner. Mr. Nilan stated, "F**k you, you're a pain ... you're out of here" Mr. Bittner's employment was terminated that day.

10. On or about April 8, 2004 Mr. Bittner sent Optos, Inc., a check in the amount of \$4,603.51 for the exercise of stock options representing the purchase of 5000 shares of Optos stock. Although the check was cashed by Defendant, to date Mr. Bittner has not received the stock certificates or any other information evidencing the purchase of the stocks on Mr. Bittner's behalf.

**COUNT I
VIOLATION OF THE FAMILY AND MEDICAL LEAVE ACT OF 1993**

11. Plaintiff realleges the allegations set forth in paragraphs one through ten above as if fully stated herein.

12. The Plaintiff properly made requests for leave pursuant to the Family and Medical Leave Act for the foster care placement of a child. Defendant denied those requests.

13. Defendant terminated plaintiff's employment in retaliation for exercising his rights as protected by the Family and Medical Leave Act of 1993.

14. The defendant's actions as herein stated amounted to significant and substantial violations of Plaintiff's rights as protected by the Family and Medical Leave Act of 1993.

**COUNT II
CONVERSION**

15. Plaintiff realleges the allegations set forth in paragraphs one through fourteen above as if fully stated herein.

16. On or about April 8, 2004 Plaintiff sent defendant a check for \$4,603.51 pursuant to Defendant's solicitation for the purchase of stock in the Defendant. Defendant cashed Plaintiff's check but to date has failed and refused to provide any evidence that the stock was purchased on Plaintiff's behalf.

17. Plaintiff has requested the return of \$4,603.51. To date Defendant has failed and refused to return the money.

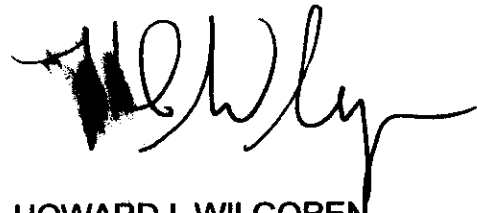
18. Defendant has converted to its own use the amount of Four Thousand Six Hundred Three (\$4,603.51) Dollars, the property of Plaintiff.

WHEREFORE, the plaintiff demands judgment against defendants as follows:

1. All wages and benefits lost by Plaintiff from October 31, 2003 to the present.
2. Interest on the amount described in the preceding paragraph.
3. Punitive damages in an amount equal to that awarded in the preceding two paragraphs.
4. Attorney's Fees.
5. Interest on the Judgment.
5. Costs of this action.
6. Such further relief as this honorable Court deems just.

THE PLAINTIFF IN THE ABOVE ENTITLED ACTION DEMANDS A TRIAL BY JURY.

EDWIN JAMES BITTNER,
Plaintiff
By his Attorney,

A handwritten signature in black ink, appearing to read 'H. Wilgoren', with a stylized flourish at the end.

HOWARD I. WILGOREN
179 Union Avenue
Framingham, MA 01702
(508) 626 - 8600
BBO No. 527840

DATED: November 17, 2004